

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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In the Matter of

Implementation of Section 10 of the
Cable Consumer Protection and
Competition Act of 1992

Indecent Programming and Other Types
of Material on Cable Access Channels

MM Docket No. 92-258

COMMENTS ON PROPOSED RULE MAKING

Adopted November 5, 1992:

Released: November 10,
1992

Comments Date: December 7, 1992

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By: Hillsborough County Board of County Commissioners
Communications Department
625 Twiggs Street
Tampa, Florida 33602

DEC - 7 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Attention: Frank Turano, Director Communications

Background:

Hillsborough County, a political subdivision of the State of Florida, is located on the west coast of the state and encompasses 1072 square miles. Major population centers within Hillsborough County include: the City of Tampa, Plant City and Temple Terrace.

The City of Tampa (125 square miles) is served by Jones Intercable Venture Fund 12 (B,C,D), a 60 channel system offering a 47 channel basic cable service package to approximately 55,000 subscribers.

Plant City and Temple Terrace, small 6 square mile communities, are served by Paragon Cable's 36 channel cable system offering a 30 channel basic cable package in Plant City and a 33 channel basic cable package in Temple Terrace.

The remaining unincorporated area is served by a site specific franchisee, Cablevision Industries Limited Partnership, and two county wide franchisees, Paragon Cable and Telesat Cablevision, Inc. Paragon offers both a 60 channel cable system (54 channel basic cable package in areas where they compete with the other county wide franchisee) and a 38 channel system (32 channel basic cable package in areas where it competes with the site specific franchisee), in the remaining areas they are the sole cable television service provider. The total subscriber count for Paragon is approximately 110,000.

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Cablevision offers a 36 channel cable system to approximately 11,000 subscribers (30 channel basic cable package in areas where it competes with the county wide franchisees), in the remaining areas they are the sole provider of cable television service.

Telesat offers a 60 channel cable system to approximately 3,300 subscribers (54 channel basic cable package).

Hillsborough County has within the last few years seen a marked increase in programming on its Public Access channels. Some of this increased programming is perceived by many of the County's residents to be vulgar, obscene, and a detrimental influence on minors. The programs in controversy have included visual depiction of male and female nudity, including but not limited to, genitalia, simulated sexual activity, and/or sexually related physical contact between performers and audience members, profanity, alleged drug and alcohol abuse as well as acts of masochism and violence.

Tapes containing examples of the above referenced activity have been referred to the local State Attorney's Office for possible criminal prosecution under the State of Florida's obscenity statutes. This Office has to date not yet initiated prosecution. It is perceived at this point in time that while many of the activities involved may be "indecent" they may not necessarily rise to the level of obscenity set forth in the state statutes.

The County, as a result, finds itself severely restricted in its efforts to be responsive to those members of the community who object to the availability of the programming in question. Clarification of the 1992 Cable Act's provisions contained in this proposed rule making are, therefore, of paramount importance to Hillsborough County. Towards that end, we submit the following comments:

INTRODUCTION

1. N/A
2. Liability to cable operations for access programming should be extended to include not only obscene programming but also those other areas of speech otherwise protected by the Constitution as well. The current amendment will, however, encourage the cable operator to join with the local franchising authority in taking affirmative steps to preclude the transmission of obscene programming.

3. N/A

LEASED ACCESS CHANNELS: VOLUNTARY PROHIBITION BY CABLE OPERATORS

4. The language of Section 10, amending Section 612 (h), providing the cable operators the discretion to exclude any programming it "reasonably believes" to be indecent seems inconsistent with the mandatory language included in subsection (j) aimed at limiting the access of children to indecent programming.

What, for example, happens in the situation where the cable operator has chosen not to do a written policy prohibiting such programming on leased access and a program qualifying under the proposed indecency standard is submitted?

If the program is not otherwise prohibited, where should the program in question be shown, on the cable operator's regular leased access channel or on the separate blocked leased access channel mandated by the language of Section 612?

While it can reasonably be anticipated that this area may be subject to a prior restraint challenge, it is recommended that the cable operator be required to make an election via written policy, (to be filed with the franchising authority), which precludes all indecent programs outright or follows the specific guidelines for blocked leased access set forth in section 612 (j). This recommendation will avoid the enforcement problem described above.

LEASED ACCESS CHANNELS - INDECENT MATERIAL REQUIRED TO BE BLOCKED

5. Hillsborough County supports the specific provision set forth in this Section with the following clarification: that these provisions requiring a blocked leased access channel and programmer disclosure of indecent content are deemed binding on all cable operators except in those instances where a written policy completely precluding such programming is provided.
6. Hillsborough County supports the adoption of a definition of indecency which incorporates the language applied in the telephone and broadcast medium.
7. Hillsborough County supports the adoption of a "community standards" test unique to the medium of cable television.

8. The blocking approach described in Section 10 as opposed to the "safe harbor" approach (programming within specified hours) currently applied in broadcast medium is beneficial from an enforcement standpoint. To protect all parties involved, Hillsborough County recommends: (a) the leased access channel on which indecent programming is allowed be audio and visually scrambled; (b) a signed subscriber release be required prior to unscrambling; and, (c) the lock-box option be continued even for those subscribers requesting scrambled leased access channels.
9. Hillsborough County supports limiting children's exposure to indecent programming on leased access channels. The recommendations discussed in paragraph 8, above, would also apply to this issue as well. In addition, program providers should also be required to sign an affidavit affirming that the program in question is not indecent as defined under the cable medium's "community standards" test and acknowledging that the provider not the cable operator is solely responsible for programs aired in violation of said agreement.
10. Hillsborough County does not agree with the interpretation included. Pursuant to the language contained in Section 612 (h), the cable operator is granted the discretion to prohibit that programming it "reasonably believes" to be indecent. The County would agree that the language of Section 10 would suggest that the cable operator as well as the program provider would have an obligation to put such programming on a blocked leased access channel unless the transmission of such programming is specifically prohibited pursuant to a cable operator's written policy.
11. Hillsborough County supports mandatory certification provided by the program provider to the cable operator prior to airing that the program in question does not qualify as obscene or indecent under the definition to be hereinafter established. A uniform application of such a certification requirement would be less restrictive and seemingly more content neutral as intended by the language of Section 612 (c) (2).

12. Hillsborough County recommends the following time frames for the provision of adequate notice regarding program content:

(a) seven (7) days notice for pre-produced programs; and,

(b) three (3) days notice for live programs.

(c) If written certification is not received by air date, the program in question is not aired. Absent exigent circumstances defined at the local level, the program provider will not be entitled to a refund of the fees assessed for air time.

(d) The cable operator in coordination with the program provider will also have the discretion to air another previously certified program.

(e) Program certifications should be retained for the term of the franchise or some other mutually agreed upon time period.

PEG CHANNELS - CABLE OPERATOR-IMPOSED PROHIBITIONS ON CERTAIN TYPES OF PROGRAMMING

13. Hillsborough County recommends:

(a) further clarification of the linkage between the "sexually explicit conduct" referred to in Section 10 for PEG channels and the definition of "indecent" programming developed for leased access channels;

(b) making mandatory the adoption by cable operators of a written policy either completely prohibiting "programming which contains obscene material, sexually explicit conduct or material soliciting or promoting unlawful conduct", or authorizing its transmission under certain limited circumstances such as allowing "indecent" programming to be placed on either a separate public or leased access channel under the same conditions set forth in Section 612 (j); and,

(c) the limiting of cable operator control over PEG Access programming to public access only, except in those instances where the cable operator is specifically required to program the government and educational access channels as well.

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14. Hillsborough County supports codifying the new statutory provisions and specifically those related to programmer certification of program content. On the issue of conflicts between cable operators and programmers, a local based method of penalties and dispute resolution is recommended. A suggested grievance procedure might include the following steps:

- (a) initial review of complaint by cable operator;
- (b) the referral of unresolved disputes to a citizen advisory committee authorized to act in such a capacity;
- (c) further review by franchising authority if a resolution cannot be reached; and,
- (d) the judicial process.

15. N/A

16. N/A

17. N/A

18. N/A